IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4431 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BOTAD NAGARPLAKA

Versus

DHADHAL RAJUBHAI ODHABHAI

Appearance:

1. Special Civil Application No. 4431 of 2003
M/S THAKKAR ASSOC. for Petitioner No. 1
MR KISHOR M PAUL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 09/07/2004

ORAL JUDGEMENT

Rule. Learned advocate Shri Kishor M.Paul waives service of notice of rule on behalf of the respondent. At the joint request of the learned advocates for the

parties, the matter is taken up for final disposal forthwith.

2. By way of present petition, the petitioner has challenged the award dated 20th January 2001 passed by the Labour Court, Bhavnagar, by which the reference of the respondent workman was allowed and the present petitioner was directed to reinstate the respondent with full backwages.

3. It is not in dispute that the petitioner was engaged in April 1989 and came to be terminated by an oral order dated 16.8.90. It was this termination order which the respondent challenged before the Labour Court.

4. I am informed that during the pendency of the petition, the respondent is already reinstated in service. By the order dated 9.4.2003, this Court had also directed the petitioner to pay salary for the period between 20th January 2001 to 31st March, 2003. I am informed by the learned advocates appearing for the parties that pursuant to this order dated 9.4.2003, the respondent is already paid 60 per cent of the salary for the aforesaid period which the respondent-workman has accepted in view of the weak financial condition of the petitioner.

5. The short question that is required to be decided in the present petition therefore is with respect to the backwages for the period from 16.8.90 i.e. date of termination till 20th January 2001 i.e. the date of the award. In the award under challenge, the Labour Court has observed that for deciding the question of backwages it would be incumbent upon the employer to prove the extent of the employment of the workman during the intervening period from the date of termination till the date of the award. The Labour Court has observed that in the present case, no material has been produced to show that the workman was gainfully employed. There cannot be any dispute about the observations made by the Labour Court in this regard, however it cannot be lost sight of the fact that the respondent workman had discharged duties only for a period of one year and four months and the backwages being ordered by the Labour Court in its award would be for more than 10 years. Considering these aspects of the matter, I am of the view that the order for hundred per cent backwages would be required to be modified.

6. Learned advocate for the respondent-workman gives his concession to slashing down the order for backwages

from hundred per cent to payment of 40 per cent of backwages. I find that the offer is reasonable and is required to be accepted.

7. In view of the above discussion, I set aside the award of the Labour Court to the extent the same provides for hundred per cent backwages and substitute the same with direction for payment of 40 per cent of backwages and accordingly I direct the petitioner to pay the said amount to the respondent workman. Since admittedly the petitioner is in financial crisis, this Court is not giving any fixed time limit for payment of backwages. However, it is expected that the same will be paid as early as possible and preferably within a period of four months from today.

8. In view of the above directions, the petition stands partially allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(Akil Kureshi, J.)
(vjn)